

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**GARY W. OGG AND JANICE OGG,  
APPELLANTS**

**vs.**

**MEDIACOM, LLC.,  
RESPONDENT**

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DOCKET NUMBER WD73877

Date: August 7, 2012

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Appeal from:

The Circuit Court of Clay County, Missouri  
The Honorable Shane T. Alexander, Judge

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Appellate Judges:

Division One: Joseph M. Ellis, P.J., James E. Welsh and Alok Ahuja, JJ.

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Attorneys:

James Orlofsky, for Appellants

Jerome T. Wolf, for Respondent

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**APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**GARY W. OGG AND JANICE OGG, APPELLANTS**

**v.**

**MEDIACOM, INC., RESPONDENT**

WD73877

Clay County, Missouri

Before Division One Judges: Joseph M. Ellis, P.J., James E. Welsh and Alok Ahuja, JJ.

This class action arose out of a trespass claim Gary and Janice Ogg filed against Mediacom, LLC ("Respondent") in 2001 after they discovered Respondent installing fiber optic cable on their property. In 2006, the Circuit Court of Clay County certified a class of approximately 1,400 landowners who claim that Respondent trespassed upon their properties when it installed its fiber optic cables without the property owners' permission. Respondent contends that it was authorized to install its cables on the class members' properties pursuant to licensing agreements that Respondent entered into with various utility companies, which have utility easements on the class members' properties, and the Missouri State Highway and Transportation Commission, which has highway rights-of-way on some of the class members' properties.

In 2009, the Oggs proceeded to trial on their trespass claim against Respondent and were awarded damages. Soon thereafter, Appellants motioned the trial court to amend the judgment to include prejudgment interest. The trial court denied Appellants' motion for prejudgment interest, finding that Appellants' damages were not liquidated, as is required to obtain prejudgment interest, because the amount of damages was not readily ascertainable.

In 2010, Respondent filed a motion to decertify the class after conducting discovery on 47 test case class members. The trial court granted Respondent's motion to decertify, finding that individual issue regarding standing, liability, and damages predominated over the issues common to the class and thereby made the class unmanageable.

Appellants now appeal from the judgment granting Respondent's motion to decertify Appellants' class and from the judgment denying their motion for prejudgment interest on the damages awarded to class representatives Gary and Janice Ogg.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

**Division One holds:**

(1) The trial court did not abuse its discretion in granting Respondent's motion to decertify Appellants' class because the trial court's determination that the class was no longer maintainable due to individual issues with standing and liability was not arbitrary or unreasonable in that the evidence discovered as a result of the 47 test cases established that the trial court would have to make various individual determinations with respect to each class member that would then predominate over the class's common issues.

(2) The trial court erred in denying Appellants' motion to amend the judgment to include prejudgment interest because Respondent benefitted from its trespass upon the Oggs' property and because the Oggs' damages were readily ascertainable in that, from the lawsuit's inception both parties recognized, and the jury was subsequently instructed that the *measure* of damages was to be the difference in value of the Oggs' property before and after the trespass. The fact that the parties' experts offered differing testimony as to how they determined the *amount* of damages, including Appellants' expert's testimony as to a "corridor theory" that had never been used previously in a trespass cause of action in Missouri, did not make the Oggs' damages unascertainable.

**Opinion by: Joseph M. Ellis, Judge**

Date: August 7, 2012

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